

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL KHEIBARI,

Plaintiff,

v.

Case No. 14-11496
Honorable Linda V. Parker

RITE AID CORPORATION,

Defendant.

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OPINION AND ORDER

On April 14, 2014, Plaintiff, without the assistance of counsel, initiated this lawsuit against Defendant alleging employment discrimination. Plaintiff has since retained counsel to represent him in this matter. (ECF No. 10.) The case initially was assigned to the Honorable Lawrence P. Zatkoff, now deceased. On February 22, 2015, after his passing, the matter was reassigned to the undersigned pursuant to Administrative Order 15-AO-015.

Defendant filed a motion for partial summary judgment on February 28, 2017. (ECF No. 66.) Plaintiff filed an opposition brief on March 24, 2017 and Defendant filed a reply brief on April 6, 2017. (ECF Nos. 69, 70.) On June 16, 2017, the Court received a notice of Plaintiff Michael Kheibari's death pursuant to Federal Rule of Civil Procedure 25(a)(1). (ECF No. 71.) This Court held a telephonic status conference on June 20, 2017 to discuss the notice of death.

Federal Rule of Civil Procedure 25(a) sets forth the procedure to be followed when a party dies during the proceedings:

a) Death.

(1) Substitution if the Claim Is Not Extinguished.^[1] If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

Fed. R. Civ. P. 25(a). "The objective of the suggestion of death set forth in Rule 25(a)(1) is to alert nonparties to the consequences of the death of a party in a pending lawsuit so that they may act if they desire to preserve the decedent's claim." *Gruenberg v. Maricopa Cnty. Sheriff's Office*, No. 06-0397, 2008 WL 2001253, at *1 (D. Ariz. May 7, 2008) (citing *Fariss v. Lynchburg Foundry*, 769

¹The question of whether a federal civil rights claim survives the plaintiff's death is a question of state law. *See Robertson v. Wegmann*, 436 U.S. 584, 588-89 (1978). Under Michigan law, "[a]ll actions and claims survive death" of the injured person during the pendency of the action. *See Mich. Comp. Laws* § 600.2921.

F.2d 958, 962 (4th Cir. 1985)). “The rule establishes a procedure that protects those who have an interest in the litigation and the authority to act on behalf of the decedent by permitting substitution for the deceased party without unduly burdening the surviving party.” *Id.* (citing *Barlow v. Ground*, 39 F.3d 231, 233-34 (9th Cir. 1994)).

Thus the Court is issuing this Order to place the fact of Plaintiff’s death on the record and to alert Plaintiff’s successor or representative, if any, of the need to file a motion for substitution **within ninety days (90)** of this Order if he or she wants to continue this litigation.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: June 21, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, June 21, 2017, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager